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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,395	09/27/2001	Hirofumi Nitta	000400-873	9045

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EXAMINER

PEZZLO, BENJAMIN A

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/963,395

Applicant(s)

NITTA ET AL.

Examiner

Benjamin A Pezzlo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 2,6 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, and 8-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 2, 6, and 7 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.
2. Please note that claim 13 has been identified as a generic claim and thus has been examined on the merits along with the other generic claims, namely, 1, 4, 5, 8, 9, 11, 12, and 14, and the claims of elected species 2, namely, 3 and 10.
3. Applicant's election with traverse of the election of species requirement in Paper No. 5 is acknowledged. The traversal is on the ground(s) that the claims define different characteristics of a single disclosed embodiment. This is not found persuasive because various patentably distinct methods for controlling a hydraulic pump are disclosed and claimed. Merely because the various methods may be integrated into a single computer algorithm fails to render them obvious variants. Note further that each of the identified patentably distinct methods is represented as a separate subroutine in Fig. 4 capable of operating mutually exclusively with respect to each other subroutine, i.e. method.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

4. The drawings are objected to because “DC” should be provided in Fig. 1, see page 11 lines 26 and 35. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

5. The disclosure is objected to because of the following informalities:

page 14, line 37, “diving” should be “driving”

page 15, line 43, “sued” should “used”.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, at line 11, “vehicle condition” is vague.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

9. Claims 1, 3-5, and 8-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Martin et al. (US 6318817).

Martin et al. disclose a hydraulic brake system including a hydraulic pressure generating device 102 for pressurizing brake fluid supplied from a reservoir 102a to apply a brake pressure to a wheel cylinder in response to operation of a brake operating member 101, an auxiliary hydraulic pressure source 110, 111 having an accumulator 111 and a hydraulic pump 110, the hydraulic pump pressurizing the brake fluid supplied from the reservoir 102a to a predetermined level for generating a power hydraulic pressure, an output hydraulic pressure detecting means 122 for continuously detecting an output hydraulic pressure of the accumulator of the auxiliary hydraulic pressure source, vehicle condition detecting means (col. 16 line 31: ECU) for continuously detecting an operating condition of the vehicle, driving condition setting means (col. 16 line 55) for controlling the hydraulic pump based on the driving condition of the hydraulic pump set by the driving condition setting means and the output hydraulic pressure of the accumulator of the auxiliary hydraulic pressure source.

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Re claims 3, 10, and 13, for operation amount detecting means (stroke sensor), see col. 16 line 35, deceleration detecting means (wheel sensor detecting wheel speed), see col. 16 lines 41-42.

Re claims 4 and 11, see Fig. 1 for master cylinder 102 and hydraulic booster 111.

Re claims 5 and 12, see sensor 122.

Re claims 8 and 14, see motor M.

Re claim 9, the pump is not operated in the absence of brake fade.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Luckevich et al., Yoshida et al., Angerfors, Sakakibara, Borchert, Busch et al, Matsuda et al., Fukamachi, and Gaillard disclose related devices.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A Pezzlo whose telephone number is (703) 306-4617. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on (703) 308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 308-3519 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

BAP

November 14, 2002


JACK LAVINDER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600
11/14/02